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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,086	03/30/2006	Bernd Hansen	51062	8733

1609 7590 04/03/2007
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
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WASHINGTON,, DC 20036

EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

CD

Office Action Summary	Application No. 10/574,086	Applicant(s) HANSEN, BERND	
	Examiner Stephen F. Gerrity	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/30/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. Receipt is acknowledged of an Information Disclosure Statement, filed 30 March 2006, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

Specification

2. The abstract of the disclosure is objected to because of the use of legal phraseology, i.e. said. Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because the reference to claim numbers in the written description is improper, the written description must be complete in and of itself and not incorporate by reference the subject matter of a claim or claims. Applicant's attention is directed to page 1, lines 3 and 11, and page 2, line 8. Appropriate correction is required.

4. The disclosure is objected to because the written description lacks the appropriate section headings customarily found in a U.S. patent applicant as provided in 37 CFR 1.77(b), which are:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 101 and 112, 2nd paragraph

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

35 U.S.C. 112, 2nd paragraph reads as follows:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 3 and 4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 3 and 4 are rejected under 35 U.S.C. 101 because the subject matter is directed to neither a "machine" nor a "process". Claim 3 recites "Device for executing the process as claimed in claim 2" in line 1, this recitation embraces or overlaps two different statutory classes of invention, namely a "machine" and "process", and thus fails to conform with 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only.

Additionally, claims 3 and 4 are rejected under 35 USC. 112, 2nd paragraph as indefinite because claim 3 recites "Device for executing the process as claimed in claim 2" in line 1, which makes claims 3 and 4 ambiguous. Ex parte Lyell, 17 USPQ2d 1548 (BPAI 1990). See MPEP § 2173.05(p)(II).

5. Claim 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, the phrase "preferably ..." renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 3, line 1, the use of the pronoun "it" renders the claim vague and indefinite because it is unclear to what "it" applicant is referencing.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen (**DE 2,703,527**) in view of Ranalli et al. (**US 4,244,914**).

The Hansen reference discloses a method and a device for the production of filled and sealed containers, a tube being extruded by means of an extrusion die head and shaped, filled and sealed by a shaping, filling and sealing device, the two devices having their own frames. The subject matter of claims 1 and 3 therefore differs from that which is known from Hansen in that the tube has at least one layer which makes the container impermeable to oxygen, the device having a coextrusion die head and a number of extruders for forming a tube from at least two layers. The Ranalli et al. reference discloses that it is old and well known in the relevant art to production of containers from a tube formed by coextrusion with a layer which is impermeable to oxygen is generally known. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have included the coextrusion of an added layer which is impermeable to oxygen in the Hansen method and device, in order to produce the self evident benefit of a filled and sealed container which is impermeable to oxygen to preserve the contents for extended periods of time.

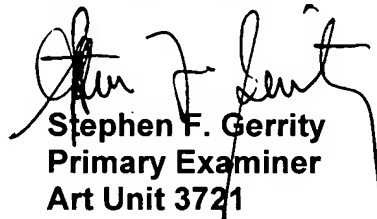
Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 6:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Stephen F. Gerrity
Primary Examiner
Art Unit 3721

1 April 2007